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In re Application of
FUCHS et al.
Application No.: 09/856,003
Filing Date: 15 May 2001
Attorney's Docket No.: 9320.0129USWO
For: THERMAL PRINTER

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DECISION ON

PETITION

This is in response to applicant's "Petition to Treat May 21, 2001 Application Filing as a Filing under 35 U.S.C. 111(a)" filed in the United States Patent and Trademark Office (USPTO) on 16 January 2003, via facsimile, and refiled on 24 April 2003, requesting the above referenced application be converted from a national stage application filed under 35 U.S.C. 371 to a national application filed under U.S.C. 111(a).

BACKGROUND

On 15 May 2001, applicant filed a transmittal letter (Form PCT/1390) requesting entry into the national stage under 35 U.S.C. 371 and referenced PCT/FR00/06174. The filing included 9 pages of specification, 7 claims, 5 pages of drawings and abstract. The unsigned declaration also referenced PCT/FR00/06174. These papers were assigned application no. 09/856,003.

On 16 January 2003, applicant originally filed the instant petition requesting that the application papers submitted 15 May 2001 be treated as a filing under 35 U.S.C. 111. Petitioner requests, in effect, that the application papers, requesting national stage entry under 35 U.S.C. 371, be considered an application filed under 35 U.S.C. 111(a) and be accorded a filing date of 21 May 2001.

DISCUSSION

As explained at Section 1893.03(a) of the Manual of Patent Examining Procedure (MPEP), any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of

the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

On 15 May 2001, applicant filed a request for entry into the national stage in the USPTO along with the basic national filing fee of \$860, identified the application as a filing under 35 U.S.C. 371 and referenced PCT/FR00/06174 in the transmittal letter. However, communication with the International Bureau confirms that PCT/FR00/06174 does not exist as an PCT international application. Thus, the papers filed on 15 May 2001 which included a set of application papers (specification, claims & drawings) and filing fees for an application can not be treated as a filing under 35 U.S.C. 371 and must be considered a filing under 35 U.S.C. 111(a).

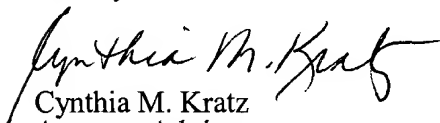
The specification, claims and drawings filed on 15 May 2001 are considered as a new filing under 35 U.S.C. 111(a), and assigned application no. 09/856,003. The preliminary amendment submitted on 15 May 2001 will be retained in application file 09/856,003 and acted upon for purposes of examination. Applicant's petition to convert the application from a filing under 35 U.S.C. 371 to an application under 35 U.S.C. 111(a), is granted.

The basic national U.S. filing fee of \$860 will be refunded to applicant's deposit account and applicant will be charged the filing fee of \$710 for basic filing fee for a U.S. utility application.

CONCLUSION

For the reasons above, the petition to treat the present application as a filing under 35 U.S.C. 111(a) is **GRANTED**.

The application is being forwarded to the Office of Initial Patent Examination for processing the present application as a filing under 35 U.S.C. 111(a) and having a filing date of 15 May 2001.



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